



COUNCILMEMBER CARL DEMAIIO

FIFTH DISTRICT
CITY OF SAN DIEGO

MEMORANDUM

DATE: May 26, 2009

TO: Mayor Jerry Sanders
Jan Goldsmith, City Attorney
City Councilmembers

FROM: Councilmember Carl DeMaio *Carl DeMaio*

RE: New City Hall: Committing to a Public Vote and Exploring Alternatives

While I do not support entering into an Exclusive Negotiating Agreement (ENA), should the City Council ultimately decide to move forward with an ENA, I suggest that the following three conditions be included to provide maximum protection to taxpayers.

- **Condition 1: Study Group to Devise Alternatives to New City Hall**

While negotiations are conducted, the City should, on a parallel track, convene a study group to develop at least 2 to 3 alternatives for its office space needs that the Mayor and City Council could consider in lieu of a new City Hall.

- **Condition 2: Commit to Put Any Proposal for a New City Hall to a Public Vote**

Charter Section 90.3 is intended to protect taxpayers in large-scale public projects such as a new City Hall. For reasons outlined below, the City Council should commit to a public vote as part of any ENA.

- **Condition 3: Require an ENA to Come at No Cost to Taxpayers**

An ENA may cause the City to incur additional costs for changes to design, negotiations and "break-up" costs in the event an agreement cannot be reached. To account for the possibility that modifications -- such as design changes or alterations to the deal structure to avoid triggering Charter Section 90.3 -- could be made during the negotiations, the City Council should require that any ENA on this project comes at absolutely no cost to taxpayers with the exception of staff time.



**Public Vote on New City Hall:
Potential Applicability of Charter Section 90.3 and the Need for
Transparency of Deal Terms**

Charter Section 90.3 requires voter approval for large projects that “confer a significant private benefit.” As noted by CCDC, “the applicability of this provision ... *depends on the ultimate terms of the agreement, partnership structure and development program*” (emphasis added).¹ The City Council should be aware of any ramifications of this Charter Section to the project’s financial projections. (See Attachment 1)

I request that the City Attorney provide a legal opinion to decision-makers on the ramifications of Charter Section 90.3 as it relates to this project.

It is imperative that the City Council fully understands the ramifications of Charter Section 90.3 as they apply to the various facets of the development proposal prior to deciding to spend time and money engaging in an ENA with a developer.

Aside from the requirements of Charter Section 90.3, taxpayers should be provided with the maximum protection and participation in this decision due to the vast financial commitment of funds required to move forward with even the most conservative versions of this project. This is most easily accomplished by allowing taxpayers to express their opinion at the ballot box.

As stated earlier, decision-makers need to be aware of all costs associated with the actions required to avoid the provision of Charter Section 90.3 prior to deciding to enter an ENA. These potential costs include the pursuit of a development proposal that is less beneficial to taxpayers, as well as costs associated with required changes in design that may occur in the ENA process.

The Need for “Hold Steady” Alternatives to a New City Hall

Concurrent to the ENA process, the City should identify options in addition to the very specific parameters outlined by CCDC in the current “Hold Steady” scenario. Requiring the City to develop these “fall back” options is not only prudent, but may enhance City leverage in negotiations with the developer.

Specifically, the City Council should request the formation of a study group to devise at least 2 to 3 “Hold Steady” options in addition to redevelopment or the current alternative as modeled by CCDC.

¹ Centre City Development Corporation: Special Meeting of May 20, 2009, Agenda 678

As presented by CCDC in its latest financial analysis of the project, the alternative to building a new City Hall is renewing the City’s leases and remaining in City-owned buildings, such as the City Administration Building (CAB) and Concourse, for 10 more years. The expenditures required to remain in these buildings significantly increase in the last five years of this 10 year period, according to the recently released “Facilities Condition Assessment 2009 Supplemental Analysis.”

Other options, such as capitalizing on a current 20% downtown vacancy factor to obtain financially advantageous lease rates at other potential locations, have not yet been considered. Upon exploration, such options may provide a different version of the “Hold Steady” scenario that costs the City significantly less than the one currently modeled by CCDC, and would allow to City to avoid dedicating scarce financial resources to maintaining buildings at the very end of their useful life.

Lingering Concerns Regarding Project Timing and Financial Projections

I continue to reiterate my significant concern over the appropriateness of the timing of this proposal as well as the questionable nature of the financial projections used to identify “cost savings.”

Flawed Comparisons:

As outlined in memoranda from my office dated April 23, 2009 and May 12, 2009, the financial modeling of the new City Hall suffers from major flaws:

- Differently sized City Halls in “Hold Steady” Alternative and Redevelopment Proposal

The impact of dissimilar building sizes and funding plans can be observed in the significantly varied proportional values of “Total Offsets” versus “Gross Costs” in the redevelopment and “Hold Steady” alternatives provided in the May 19, 2009 financial analyses.

- Questionable Lease Rates

The current commercial lease market puts the City in a highly advantageous position. Reflecting this, a disagreement has emerged between the consultants retained by CCDC to perform the financial modeling and CCDC’s own commercial lease advisers regarding current market lease rates for commercial real estate. It is imperative that the financial modeling accurately captures the City’s unique competitive advantage in the downtown commercial real estate market.

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Furthermore, as discussed in more detail above, the models mistakenly use the CAB and Concourse as the only two “Hold Steady” facilities.

The City’s liabilities over the coming years (e.g. unfunded pension liability, unfunded retiree health obligations, deferred maintenance backlog) do not render it in a position to increase expenditures by building a new City Hall. The City clearly needs to channel its scarce resources toward reducing its liabilities, restoring community infrastructure and structurally eliminating its budget deficit. Building a new City Hall will only impede these efforts to restore San Diego’s financial stability.

Entering an ENA will require the City to expend time and money on a project it currently does not have the financial bandwidth to undertake.

However, should the City Council decide to move forward with an ENA, I strongly suggest that the above conditions be included as part of that decision.

Section 90.3 of the Charter states that:

“The City may not enter into the agreements necessary for financing, development, and construction of a major public project that confers a significant private benefit, unless that project is submitted to a vote at a municipal election and a majority of those voting in that election approve the project.”

As noted by CCDC, “the applicability of this provision of the City Charter to any future development agreement between the City and GED ***depends on the ultimate terms of the agreement, partnership structure and development program***” (emphasis added).¹

The same document from CCDC goes on to state that “the provision does not apply to the execution of an ENA since that form of agreement does not approve of any project or authorize the commitment of City funds in excess of 10 percent of the City’s annual General Fund budget.” Note that the total cost of the project (\$432 million), defined in Section 90.3 as “the amount paid to directly develop or construct the project,” clearly exceeds 10% of the revised FY 2010 General Fund budget.²

Components of the Development Proposal “Alternatives”

While the proposal contains a variety of development “Alternatives,” perhaps the most useful for decision-making is Alternative D (Phase One only), which proposes the construction of a new City Hall, but does not assume further, and potentially infeasible, private development.

As described by CCDC, under the Phase One Only alternatives, “a 10 percent non-refundable deposit, in an amount estimated to be \$6.7 million, would be collected by the City from GED to secure their future potential right to acquire or lease the surplus land within the Site.”³

By allowing GED to “acquire or lease” the extra space in the proposed building, this proposal mitigates costs through a variety of “offsets,” notably an annual “Master Lease” offset of \$7.4 million. According to the financial analysis, the City would be guaranteed an annual cost-mitigation of \$7.4 million by the developer for nine years -- this amount decreases over time as the City is assumed to utilize more of the excess space as its downtown staff grows -- in exchange for allowing the developer to utilize the excess real estate to seek revenue (a seemingly significant private benefit).

¹ Centre City Development Corporation: Special Meeting of May 20, 2009, Agenda 678

² Centre City Development Corporation. Report # 09-069. May 27, 2009.

The cost of the project before financing is reported as more than \$432 million. This is 3.8 times greater than the approximately \$113 million threshold set by the City Charter. *Note:* \$113 million represents 10% of the approximate General Fund budget following the May Revision to the FY 2010 Proposed Budget.

³ Centre City Development Corporation: Special Meeting of May 20, 2009, Agenda 678.

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Ensure Appropriate Application of Charter Section 90.3

The above statements by CCDC seem to imply that one of the objectives of entering into an ENA may be to structure the development proposal in such a fashion as to avoid having to place the issue before voters.